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Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, prepared pursuant to General Assembly resolution 68/151.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

The Durban Declaration and Programme of Action provide a comprehensive framework for combating racism, racial discrimination, xenophobia and related intolerance. In the present report, the Special Rapporteur focuses on the recommendation made to Member States to collect disaggregated data with a view to effectively combating such discrimination. The Special Rapporteur recalls that States have obligations under international human rights law to collect ethically disaggregated data with a view to fighting discrimination. He expresses concern about the continued absence of data disaggregated by ethnicity and other prohibited grounds of discrimination. The Special Rapporteur notes that the lack of disaggregated data on racist, xenophobic and hate crimes also means that they remain underrecorded, thus contributing to widespread impunity and limited access to remedies for victims. The Special Rapporteur stresses the indispensable role and benefits of collecting such disaggregated data to effectively combat discrimination and implement equality. He also emphasizes how the challenges posed by such data collection exercises can be overcome by observing internationally agreed-upon human rights safeguards.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 68/151. The current mandate holder and his predecessors have all noted in their various thematic and country visit reports the necessity of producing disaggregated data in order to assess accurately levels of discrimination, inequality and progress, and develop adequate policies to redress the situation of vulnerable groups. The Special Rapporteur would like to emphasize that the lack of disaggregated equality and non-discrimination data has led to a serious information gap that limits effective policymaking at the national, regional and international levels.

2. In the present report, the Special Rapporteur wishes to stress again the necessity of collecting data disaggregated by ethnicity on economic, social, cultural, civil and political indicators as an essential means of tackling discrimination and inequality. Collecting non-discrimination and equality data would enable States to identify the patterns of violations and map existing gaps and needs, in order to feed that information into policymaking processes and also evaluate the impact of existing measures. Data is also required to effectively assess and monitor whether Member States respect, protect and fulfil their obligations under international law to combat discrimination.

3. That thematic focus is all the more timely, given that equality is at the heart of the post-2015 development agenda, which also pays due attention to groups subject to discrimination on the basis of ethnicity, colour, sex, age, language, religion, culture, migratory status, political or other opinion, national or social origin, economic situation, birth, disability, or other status. In the proposal of the Open Working Group on the sustainable development goals (A/68/970), targets 17.13 and 17.19 call for the collection of disaggregated data to measure progress while leaving "no one behind", in other words, promote and foster non-discrimination and equality while upholding the universality of human rights and accountability.

II. Activities of the Special Rapporteur

A. Country visits

4. The Special Rapporteur expresses his gratitude to the Government of the Republic of Korea, which he visited from 29 September to 6 October 2014 (see A/HRC/29/46/Add.1) and to the Government of Greece, where he conducted a visit from 4 to 8 May 2015.

5. The Special Rapporteur would like to thank the Governments of Argentina and Australia for providing a positive response to his requests to visit and hopes to visit those countries in 2016. He also thanks the Government of Morocco for its invitation. He further hopes to receive a positive reply before the end of 2015 to his request to visit South Africa.

B. Other activities

6. The activities of the Special Rapporteur between July 2014 and March 2015 are reflected in his report to the Human Rights Council at its twenty-ninth session

(A/HRC/29/46). Since March 2015, the Special Rapporteur has convened a side event on racial and ethnic profiling by law enforcement, which took place in Geneva on 1 July 2015.

7. The Special Rapporteur was invited to an expert meeting on xenophobia convened by the Centre for Migration of the University of Witwatersrand in Johannesburg from 24 to 26 July 2015. He also addressed Strathmore University Law School, Nairobi, at its annual conference on terrorism and human rights on 4 and 5 August 2015.

III. Disaggregated data: normative framework

A. International framework

8. The Special Rapporteur wishes to recall that non-discrimination is a cross-cutting human right norm closely linked and intertwined with the principle of equality, as laid out in articles 1 and 2 of the Universal Declaration of Human Rights, which reassert that all human beings are born free and equal in dignity and rights and enumerate the prohibited grounds of discrimination. Non-discrimination is embedded in all major international human rights treaties, including the International Bill of Human Rights, whose instruments unanimously and explicitly prohibit discrimination, inter alia, on grounds of, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[1]

9. Article 1 of the International Convention on the Elimination of all forms of Racial Discrimination, specifically defines racial discrimination which refers to "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

10. In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights defined discrimination in similar terms, including any treatment nullifying or impairing the enjoyment on an equal footing of the rights in the International Covenant on Economic, Social and Cultural Rights and incitement to discrimination and harassment. The set of human rights treaties, which have been developed to protect the rights of individuals pertaining to particularly vulnerable groups, aim, first and foremost, to protect those individuals from human rights violations resulting from discrimination.[2]

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[1] See Universal Declaration of Human Rights, art. 2, International Covenant on Civil and Political Rights, arts. 2 and 26, International Covenant on Economic, Social and Cultural Rights, art. 2 (2), and the Charter of the United Nations, preamble, articles 1 (3) and 55.

[2] See International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, Convention relating to the Status of Refugees, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

11. Although the major international legal instruments do not explicitly refer to data collection as a means for realizing human rights for all on an equal footing, signatory States are requested to take the necessary measures to ensure non-discrimination in the enjoyment of human rights and promote the development of policies and the adoption of specific measures for the implementation of their obligations. Further, States parties are requested to submit reports on the measures they have adopted, which give effect to those rights, while indicating the factors and difficulties, if any, which have affected or are affecting implementation.[3] In that respect, the Committee on Economic Social and Cultural Rights in its general comment No. 1 (1989) on reporting by States parties asserted that the essential first step towards promoting the realization of economic, social and cultural rights was diagnosis and knowledge of the existing situation. It further recommended that States parties monitor the actual situation in order to be aware of the extent to which the various rights were, or were not, being enjoyed by all individuals under their jurisdiction.

12. The Committee also emphasized that the preparation of aggregate national statistics was not sufficient, as special attention should be given to any specific groups or subgroups which appeared to be particularly vulnerable or disadvantaged and that qualitative, as well as quantitative, data were required in order for an adequate assessment of the situation to be made. It further stated that while monitoring was designed to give a detailed overview of the existing situation, the principal value of such an overview was to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities through an inclusive process fostered by effective sharing of accurate and thorough information with all stakeholders at the national level. More specifically, in its general comment No. 20, the Committee emphasized that, in order for States parties to "guarantee" that the Covenant rights would be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively, thus requiring sufficient attention to be paid to groups of individuals who suffered historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. The Committee has advised that national strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.

13. The Human Rights Committee noted in its general comment No. 18 (1989) on non-discrimination that when reporting on articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights, States should also report on whether there remained any problems of discrimination in fact, which might be practised either by public authorities, by the community, or by private persons or bodies. The Committee therefore called for the submission by States parties of information about legal provisions and administrative measures directed at diminishing or eliminating such discrimination. Taken together with the jurisprudence of the Committee on Economic, Social and Cultural Rights, it could be inferred that the collection of disaggregated data on human rights indicators are crucial for monitoring the realization, protection and promotion of human rights for all and upholding the principles of non-discrimination and equality.

[3] See International Covenant on Civil and Political Rights, article 40 (1), and International Covenant on Economic, Social and Cultural Rights, article 16.

14. The international normative framework also provides more precise provisions on the collection of disaggregated equality data.[4] In its guidelines for reports to be submitted by States parties under article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/2007/1, para. 11), the Committee on the Elimination of Racial Discrimination asserted that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin was to be monitored, States parties, while reporting to the Committee, needed to indicate specific information on the number of persons who might be treated less favourably on the basis of those characteristics. In its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee further requested that States parties conduct periodic surveys on the reality of discrimination against people of African descent and document disaggregated data on, inter alia, the geographical distribution and the economic and social conditions of that specific group, including a gender perspective. It also stressed the necessity of taking into consideration the gender variable, as women pertaining to the groups in question often suffered multiple forms of discrimination.

15. In the Durban Declaration and Programme of Action States were invited to design policies aimed at combating racism, racial discrimination, xenophobia and related intolerance that were based on reliable statistical data. They were specifically requested to collect disaggregated data in order to document practices and inform policy. In paragraph 104 of its outcome document (A/CONF.211/8), the Durban Review Conference recommended that States develop a system of data collection, including equal opportunity and non-discrimination indicators, while in paragraph 103 it recommended that States, that had not yet done so, "establish mechanisms to collect, compile, analyse, disseminate and publish reliable and disaggregated statistical data ... to regularly assess the situation of all victims of racism, racial discrimination, xenophobia and related intolerance". Furthermore, in paragraph 59 it invited Governments and their law enforcement agencies "to collect reliable information on hate crimes in order to strengthen their efforts to combat racism, racial discrimination, xenophobia and related intolerance".

16. A number of special procedures mandate holders working, among others, on minority issues, migrants, human trafficking, food, health and poverty, have addressed the need to collect disaggregated data on human rights indicators related to their respective thematic mandates, in order to delineate the relationship between various forms of discrimination and how it affects the realization of rights, as well as performing stock-taking exercises on the efforts of Member States towards fulfilling their human rights obligations.

17. The *Principles and Recommendations for Population and Housing Censuses*, developed by the United Nations, stipulate that the decision to collect disaggregated data is dependent upon a number of considerations and national circumstances including, for example, the national needs for such data and the suitability and sensitivity of asking questions relating to ethnicity, which are therefore left to the discretion of the State. However, there appears to be a general opinion in favour of disaggregation from a human rights perspective, insofar as it contributes to addressing inequalities and discrimination.

[4] Terminology used by the European Commission to refer to equality- and discrimination-related data.

18. Although, there is no clearly stated human rights obligation for a country to disaggregate data under ethnic criteria, ethnic data could be considered as a component of the right to non-discrimination. The right to be free from discrimination includes the right of access to information which could be evidence to prove discrimination and an argument could be made that data disaggregated by ethnicity is part of such information. The State has a duty to ensure equality and that should be interpreted to include the duty to collect and analyse data disaggregated by ethnicity in order to identify inequality and monitor the effectiveness of measures implemented to remedy imbalances.[5]

19. Because non-discrimination is a cross-cutting human rights principle affecting all aspects of the realization of rights for an individual, subgroups of a population susceptible to being at a disadvantage should be identified while studying the demographic trends, employment practices and opportunities, income distribution, educational levels, patterns and trends of migration, family composition and structure, social support networks and health conditions of a population.

B. Regional policy frameworks

20. At the regional level, article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation and nationality. The European Union anti-discrimination directives prohibit discrimination on the grounds of racial or ethnic origin (directive 2000/43/EC) and religion or belief, disability, age or sexual orientation (directive 2000/78/EC). They prohibit direct and indirect discrimination, harassment, instruction to discriminate and victimization, and require member States to establish efficient sanctions and remedies. The directives also provide protection in a number of key areas of life, including employment, education, social security and health care, and access to and supply of goods and services, including housing (directive 2000/43/EC).

21. Neither of those instruments, however, poses data collection and processing as a condition for monitoring levels of discrimination and inequality. Nonetheless, in its most recent report on the implementation of the two directives, dated 17 January 2014, the European Commission emphasized that, although there is no requirement on member States to collect equality data, the collection and analysis of such data is necessary to fight discrimination and promote equality because it provides evidence of existing discrimination, making it transparent and quantifying it. In its report, the Commission further argued that the collection of data, which is the responsibility of member States, would allow the impact of measures taken for specific groups to be evaluated. It further deplored the fact that the availability of such data remained limited across the region.

22. In its first general policy recommendation on combating racism, xenophobia, antisemitism and intolerance (1996), the European Commission against Racism and Intolerance of the Council of Europe emphasized that it was difficult to develop and

[5] See Kathryn Ramsey, "Disaggregated data collection: a precondition for effective protection of minority rights in South-East Europe", Minority Rights Group International (2006).

effectively implement anti-discrimination policies without good data, which should be collected in accordance with European laws on data protection and protection of privacy, as such information would assist in assessing and evaluating the situation and experience of groups which are particularly vulnerable to racism, xenophobia, anti-Semitism and intolerance.

23. The 1969 American Convention on Human Rights and its 1988 Additional Protocol in the Area of Economic, Social and Cultural Rights prohibits discrimination on the grounds listed above. Article 12 of the 2013 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance stipulates that "the States parties undertake to conduct research on the nature, causes, and manifestations of racism, racial discrimination and related forms of intolerance in their respective countries, and to collect, compile, and disseminate data on the situation of groups or individuals that are victims of racism, racial discrimination, and related forms of intolerance." Article 15 (iv) establishes the Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination, and All Forms of Discrimination and Intolerance to monitor implementation and the compliance of States with their obligations. In that respect, States parties are requested to submit reports to the Committee containing disaggregated data and statistics on groups in situations of vulnerability. The Special Rapporteur welcomes the development of the Convention and strongly encourages member States of the Organization of American States to ratify it.

24. The Inter-American Commission on Human Rights has held that the issue of figures is essential, since "without reliable data, without indicators and periodic measurements, the kinds of political decisions calculated to deal with the discrimination problem cannot be taken. The figures also have an unmistakable political element, since for those affected it means that their invisibility is being reversed and they are being recognized along with everyone else."[6]

25. Article 2 of the African Charter on Human and Peoples' Rights stipulates that "every individual shall be entitled to the enjoyment of rights and freedoms ... without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." The collection of data as part of periodic reporting by States has been included in several guidelines, including the reporting guidelines for States parties on economic, social and cultural rights in the African Charter on Human and Peoples' Rights (Tunis reporting guidelines), in which States parties are requested to provide disaggregated statistics on the enjoyment of each right, particularly with reference to groups identified as vulnerable or marginalized, on an annual comparative basis over a period of five years. Submitting States are also requested to provide disaggregated data on the impact of the policies implemented.

26. The African Charter on Statistics, whose principal aim is to provide guidance on developing harmonized development statistics at the continental level, while reasserting State awareness of the need to collect data in order to inform and assess policies, does not make reference to equality data. In that respect the Special Rapporteur would like to underscore the necessity of developing thorough regional frameworks, including a human rights-based approach to the collection of development statistics and indicators, which should systematically aim to accurately

[6] See Inter-American Commission on Human Rights "The situation of people of African descent in the Americas" (2011).

measure levels of discrimination so that the impact of social and economic policy can be assessed.

27. In light of the provisions set out above, it is clear that the collection of disaggregated data on discrimination is an obligation of Member States as a matter of accountability in their capacity as primary duty bearers for the universal realization of human rights for all people under their jurisdiction. The following sections of the report provide details on the implementation, or lack of thereof, of equality data collection and disaggregation, good practices and indications of necessary safeguards for the collection of such data.

IV. Disaggregating data to assess discrimination and foster equality

A. Benefits of data disaggregation

28. As emphasized in the previous section, under the international human rights normative system, there is a strong mandate for the production of statistical information that goes beyond the traditional national aggregates and identifies the most deprived or vulnerable population while measuring inequality and discrimination. Hence, disaggregation of data aims to address the concern that if statistics are not broken down at the required level to support an analysis of discrimination and equality, such measurements would not adequately capture the enjoyment or violation of human rights across context-relevant population groups and would not therefore be reliable indicators in human rights assessments.[7]

29. Disaggregation simply means that data should be broken down into small defined subgroups with identifiable criteria, such as ethnicity, national origin, religion or sex, among others. Hence, data broken down by ethnic groups will reveal inequalities that may exist in the realization of rights among and between different ethnic groups, or whether, for example, some fringes of society are more affected than others by hardship.

30. The Special Rapporteur would like to stress that because minority groups are not homogeneous, ethnic data should be further broken down along the other prohibited grounds of discrimination. For example, as noted by the previous mandate holder, following his visit to the United States of America in 2008, data disaggregated by race and ethnicity produced in paired testing (which allows for a comparison of treatment between whites and persons of colour when they have similar qualifications) has identified subtle forms of direct discrimination as regards housing (see A/HRC/11/36/Add.3).

31. The Special Rapporteur is of the view that the persistence of discrimination around the world can partly be imputed to a lack of implementation of international normative provisions at the national level. He would like to recall that the collection of ethnically disaggregated data and indicators is a fundamental prerequisite and an essential tool for identifying the persons and groups affected by discrimination, as it makes them more visible and helps to understand better the nature and extent to

[7] See Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: a Guide to Measurement and Implementation* (2012).

which they are facing inequality. In some cases, disaggregated data enables the recognition of certain groups within a country, whose status is otherwise denied. In some instances not collecting such disaggregated data could equate to denying recognition to certain minority groups within a country and the vulnerable situation those groups face. It also facilitates access to justice for victims of discriminatory practices, which have often turned out to be difficult to prove.

32. Moreover, those statistics allow tailored measures based on empirical evidence, rather than assumptions, to be developed, avoiding the one-size-fits-all trap and thus optimizing the likelihood of policies being designed which would have an effective impact on the welfare of marginalized groups. According to the Millennium Development Goals Report 2015, significant progress has been made, for instance, in the availability of detailed data on indigenous peoples in Latin America as a result of the inclusion of questions on indigenous people in 17 out of 29 countries during the census round in 2010. The collection of detailed data on those groups revealed, among other things, that the proportion of births attended by health professionals was 38 percentage points lower among indigenous women than non-indigenous women in Mexico and 45 percentage points lower in Peru. The availability of those disaggregated data led to the adoption of more effective interventions to reduce inequality. By 2012, more than 80 per cent of births among indigenous women were attended by health personnel in both countries.

33. Collecting data also enables the competent authorities to decide whether affirmative action is needed to bridge inequalities between different groups within society. Census data have also increasingly been used as tools of accountability for assessing the performance of democratically elected Governments in improving the welfare of their citizens.

34. Disaggregating data is also a means of identifying indirect discrimination, which refers to laws, policies or practices which appear neutral at face value, but de facto treat certain population groups less favourably with no reasonable justification. For instance, the United States, in its most recent report to the universal periodic review in 2015, stated that in addressing the disproportionate percentage of minorities, particularly African-Americans, in the criminal justice system, "the Fair Sentencing Act of 2010 has reduced the disparity between more lenient sentences for powder cocaine charges and more severe sentences for crack cocaine charges (the latter of which are more frequently brought against racial minorities). Data from the U.S. Sentencing Commission through June 2014 indicate that 7,706 federal crack offenders' sentences have been reduced as a result of retroactive application of this change: of these offenders, an estimated 90 percent are African-American" (A/HRC/WG.6/22/USA/1). The harsher sentencing for crack cocaine-related offences was generating indirect discrimination in the administration of justice.

35. In addition to its function as a tool that would enable the assessment of the overall situation of discrimination, inform sound policies and monitor the impact of measures put in place, collecting data is also necessary to fulfil the right to information, especially for traditionally disadvantaged groups, which is provided for in article 19 of the International Covenant on Civil and Political Rights. Indeed access to demographic and ethnic data could have an empowering effect on traditionally marginalized groups, as it could foster greater and better participation in decision-making processes, thus positively impacting the realization of other

rights. Access to such information would increase visibility for those population groups vis-à-vis the other components of society, thereby sensitizing them to the existence of marginalized groups and their contribution to the life of the State.

36. The Special Rapporteur would like once more to insist that in the discharge of his mandate he has more often than not noted the absence of data disaggregated along the prohibited grounds of discrimination, especially ethnicity. In some cases that situation is due to the non-implementation of existing national provisions, linked to limited capacity and resources. In that respect, he acknowledges that disaggregating data can present several challenges, such as issues of feasibility and practicality, as it can turn out to be costly and require significant amount of resources and capacity, as underscored in the guide to the measurement of human rights indicators published by the Office of the United Nations High Commissioner for Human Rights (OHCHR).[7]

37. In some countries, however, the collection of "sensitive" data is forbidden by law and many States have demonstrated a strong resistance to collecting such information, sometimes on the grounds of legitimate human rights concerns. In a report on "Ethnic statistics and data protection in the Council of Europe countries" in 2007, the European Commission against Racism and Intolerance acknowledged the reluctance which surrounded the collection of sensitive data, resulting partly from a wrong interpretation of data protection laws, which are posed as insurmountable obstacles when in reality provisions have also been established to allow the collection of such sensitive data.

38. Although disaggregating data could be in contradiction to the right to privacy, or in the case of ethnic data lead to the revival of tensions within specific political contexts, or be misused, thus creating further discrimination and human rights abuses, the Special Rapporteur is of the view that those issues and obstacles can be overcome if certain strict human rights rules are observed by States and the mechanisms in charge of collecting such data.

B. Challenges

39. The Special Rapporteur notes that there are various forms of anxieties expressed by States with regard to the collection of ethnic data, often on the grounds that this would be incompatible with the right to privacy. That is the case for several European States, which have grounded their arguments in the provisions of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981 and European Union directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Both instruments prohibit the collection of ethnic data; however they both also contain exception clauses allowing for the collection of such data, provided that the national legal framework contains strong safeguards, including seeking the informed consent of the target population and guaranteeing privacy and data security, as well as strong justifications for the need to collect such data. The collection of personal data as vital to fighting discrimination and fostering equality meets the criteria of being a "substantial public interest", which is also a precondition under the European data protection regime.[8]

[8] See article 8 (4) of directive 95/46/EC.

40. States may also fear that the collection of data may reveal the inefficiency of the measures taken and/or lead to the inevitable allocation of additional funds to anti-discrimination policies. However, the Special Rapporteur would like to emphasize that this is merely a question of accountability and that one of the purposes of collecting data is to ensure such accountability.

41. The Special Rapporteur acknowledges that in highly polarized societies, figures showing evidence of inequalities may revive violence between groups competing for resources. The results of censuses in some countries are barely publicized, as they could represent a dangerous trigger for violent reactions in highly heterogeneous societies where individuals are mobilized on ethnic grounds. However, the Special Rapporteur would like to stress that collecting data is not a cause but rather a diagnosis of situations which are conducive to such violent confrontations between groups, who may have accumulated grievances caused by systemic inequalities and discrimination. Those fears should therefore be linked to the failure or unwillingness of States to address inequalities and discrimination rather than being imputed to the data itself. The resistance of States to collecting data may in some cases equate to obstructing the right to information, as there is an underlying resistance to documenting the situation of vulnerable or marginalized groups, including ethnic minorities.

42. Historically, population groups that have been discriminated against may also not have been in favour of the collection of that type of data, for fear that it might have the perverse effect of increasing their vulnerability to abuse. The Special Rapporteur acknowledges that specific tragic historical contexts have been a deterrent to the collection of "sensitive data" and have motivated the prohibition on collecting official ethnic data and statistics. The tragedies of ethnic cleansing under Nazi occupation in the Second World War can never be forgotten. Evidence shows that population data collection systems have greatly contributed to the identification of minorities and vulnerable groups, who were subsequently subjected to large-scale violations, as was the case for Jewish and Gypsy civilians during the Nazi occupation in the Netherlands, Belgium and France, among others. It has been documented that in the Netherlands, where the highest death rate of Jewish citizens was observed (73 per cent of all Dutch Jews), a comprehensive registration system had been developed for both administrative and statistical purposes prior to the Nazi occupation, whereby individuals were registered and identified by their belonging to a specific ethnic group, as reflected in their identity cards.[9] That was used by the Nazi administration, in complicity with the Dutch population registration authorities, to arrest and deport a large numbers of Jews and Gypsies to extermination camps. In recent history, the genocide in Rwanda was also partly organized on the basis of the existing population registration system inherited from the colonial era, which had been established by the Belgian colonial administration to divide the population into the two categories of Hutus and Tutsis. The production of identity documents, which actually mentioned the ethnic group to which individuals belonged, facilitated the massacre of more than 800,000 Tutsis in four months.

43. Such grave human rights violations provide clear evidence that population data can be misused and turned into dangerous tools. In some instances, false data have also been produced to serve political purposes, for instance to maintain ruling

[9] William Seltzer and Margo Anderson, "The dark side of numbers: the role of population data systems in human rights abuses", *Social Research*, vol. 68, No. 2 (summer 2001).

minority groups in positions of domination vis-à-vis the majority, or for electoral purposes. When ethical and human rights safeguards are not observed, disaggregation of data on religious or ethnic grounds can easily be instrumentalized. The misuse of data has been explained by a number of factors, including ideology, racism, nationalism, political and administrative opportunism, or professional zeal on the part of national statistical agencies or population registration administrative bodies in cooperation with power entities such as the security or military forces.[9] In that respect, the Special Rapporteur would like to underscore the importance of establishing independent data collection institutions with a mandate strongly grounded in international legal provisions and norms regulating such activities.

44. Moreover, ethnic statistics have been used in some instances as double-edged swords to stigmatize certain social groups. That is especially true for crime statistics. For example in Europe, Roma communities have often been overrepresented among the prison population incarcerated for criminal offences,[10] as is the case of African-Americans in the United States. Those statistics have been used to generate stereotypes and the perception that those population groups have a propensity towards crime because of cultural or certain innate characteristics.

45. If, therefore, the production of disaggregated data is essential for assessing and addressing discrimination, the establishment and implementation of human rights safeguards are prerequisites to collecting such data.

C. Safeguards on sensitive data

46. The international human rights legal framework clearly provides that in order to collect and process personal data, due regard should be given to the right to privacy and the protection of data. Moreover, the process should be participatory and based on informed consent and self-identification.

1. Right to privacy and data protection

47. In its general comment No. 16 (1988), on the right to privacy, the Human Rights Committee stipulated, inter alia, that the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law and that States must take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to have it and it must never be used for purposes incompatible with the Covenant. In order to guarantee privacy everyone should have the right to ascertain whether, and if so what, personal data are stored in automatic data files and for what purposes. Everyone should also be able to ascertain who controls or may control their files and if they contain incorrect data or are contrary to the provisions of the law, they should have the right to request rectification or elimination.

48. According to the *Principles and Recommendations for Population and Housing Censuses*, ensuring confidentiality is crucial to achieving a successful census. Clear information has to be provided as to the purpose of collecting individual data, the sole aim of which should be the production of statistics, and

[10] See, for example, European Commission against Racism and Intolerance, "'Ethnic' statistics and data protection in the Council of Europe countries" (2007).

guarantees should be provided that individual information will not be further disseminated or used for any other government databases, in accordance with principle 6 of the Fundamental Principles of Official Statistics.[11] The Special Rapporteur is of the view that, while the collection and dissemination of data fulfils the right to information, it must first and foremost protect the human right to privacy and confidentiality. The Durban Declaration and Programme of Action, which calls for the collection of data disaggregated by ethnicity, also requests that States establish the necessary legal safeguards to the collection of such data, which should be submitted to strict data protection regulations and privacy guarantees.

49. As previously stated, at the European level very strict provisions have been developed to ensure that personal data is safeguarded. In addition to the two instruments previously cited, article 8 of the Treaty on the Functioning of the European Union stipulates that everyone has the right to the protection of their personal data and that such data must be processed fairly, for specified purposes, and on the basis of the consent of the person concerned. The collection of personal data should be legitimized by legal provisions and justified for reasons of substantial public interest. The data should remain accessible to the person to whom it belongs and individuals should have the right to have their personal information rectified if they so wish.

50. Each individual should therefore, in absolute terms, remain in control of their personal information.

51. Principle 5 of the African Charter on Statistics, which provides for the protection of individual data, information sources and respondents, requests that States guarantee the protection of the private life of data providers and that persons interviewed during statistical surveys be informed of the objective of such interviews and made aware of data protection measures. Such data should in no circumstance be used for judicial proceedings, punitive measures or for the purpose of taking administrative decisions against individuals or entities, and statistical surveys should only be undertaken by the authorities if pertinent information is unavailable from administrative records or the quality of such information is inadequate in relation to the requirements of producing statistical information. The Special Rapporteur would like to stress that personal data should indeed never be used to take decisions relating to those persons from whom the data has been collected.

52. There has been a strong call to turn personal data rapidly into statistical data, so that it is impossible to connect data with persons. In the case of population censuses, those responsible are encouraged to store data with an independent institution and in a location outside the jurisdiction of the courts, especially in countries where the requisite institutions are too weak to guarantee fully privacy and the safety of the data. A number of methodological, legal and ethical safeguards have been developed and proposed to reduce the risk of future abuse of personal data. For example, it is recommended that, to the extent possible, sample surveys should be used instead of full censuses and identifiers that are specific to individuals should be stripped out.[12]

[11] See General Assembly resolution 68/261.

[12] See OHCHR, *Human Rights Indicators: a Guide to Measurement and Implementation; Principles and Recommendations for Population and Housing Censuses*, revision 2 (United Nations publication, Sales No. E.07.XVII.8); and the Fundamental Principles of Official Statistics.

53. In the United Kingdom of Great Britain and Northern Ireland, where a strong and thorough framework for the collection of ethnic data has been long established, the code of practice for national statistics under the Census Act provides that national statistics should only be used for statistical purposes and the data kept in secure locations. Access to that data must be granted by the Information Commissioner, the independent authority responsible for monitoring application of the Data Protection Act, who should ascertain that the data will be used exclusively for justifiable research. In the event that information identifying individuals must be released by law, it will be contingent on the explicit direction and personal responsibility of the National Statistician.[13]

54. With regard to privacy, the Special Rapporteur stresses that ethnically disaggregated data should always be collected with the explicit consent of the individuals concerned and contingent upon the existence of strong data protection regulations and privacy guarantees in the national legal framework. The right to privacy, from which the principle of individual autonomy can be derived, has also been closely linked to the right of individuals to self-identification, which is another precondition for collecting data.

2. Self-identification

55. In its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, the Committee on the Elimination of Racial Discrimination reasserted self-identification as a pillar of the collection of ethnically disaggregated data. Self-identification is inscribed within the right of individuals to assert their own identity. Indeed, while disaggregation by criteria such as sex, age, income and socioeconomic status may be established with more or less ease, disaggregation by ethnicity is challenging, because the identification of ethnic groups involves both objective (e.g., language) and subjective (e.g., sense of belonging) criteria, which are continuously evolving.[14]

56. Broadly defined, ethnicity is based on a shared understanding of history and territorial origins (regional and national) of an ethnic group or community and on particular cultural characteristics, such as language and/or religion. Understanding or views about ethnicity, awareness of family background, the number of generations that have been in a country and the length of time since immigration are all possible factors affecting the reporting of ethnicity in a census. Ethnicity is multidimensional and more a process than a static concept; therefore ethnic classification should be treated with movable boundaries.[15] The principle of self-identification, therefore, addresses the related concern of how ethnic categories should be determined and on what basis should individuals be classified.

57. The Special Rapporteur is of the view that it would be arbitrary to categorize individuals automatically, based on an assumption or perception of the agent collecting the data, which could easily equate to stigmatization and prejudice. Information on ethnicity should always be acquired through self-declaration of the

[13] See University of Essex Human Rights Centre Clinic, "Disaggregated data and human rights: law, policy and practice" (2013).

[14] See Olivier De Schutter and Julie Ringelheim, "*Ethnic Monitoring. The Processing of Racial and Ethnic Data in Anti-discrimination Policies: Reconciling the Promotion of Equality with Privacy Rights*," (Brussels, Bruylant, 2010).

[15] *Principles and Recommendations for Population and Housing Censuses*, revision 2.

respondent, who should also have the option of indicating multiple or no ethnic affiliations without any negative consequences. Some of the identified shortcomings of self-identification include the discrepancy between self-perception and perception by others, as that may not reflect the fact that racism and discrimination are often based on appearance rather than identity.[14] It has been pointed out that, although several studies have concluded that the outcomes of classification by third parties and self-classification are relatively similar, distrust may lead to underreporting by members of certain communities, who would prefer not to be classified among those groups which are subject to discriminatory attitudes. The Special Rapporteur believes that, despite those shortcomings, self-identification should remain the norm, as it is based on the important notion that the State should not impose an identity on the individual.

58. The Special Rapporteur stresses that confidence-building efforts are needed in order to persuade minorities that there is nothing to fear from self-identifying with a group. That is important for the successful conduct of personal data collection exercises, in terms of both the quantity and accuracy of the information gathered.

3. Participation

59. Self-identification also implies the participation of target populations in the data collection process. The human rights principle of participation encourages all sections of the population, including vulnerable and marginalized groups and human rights and other relevant institutions, to actively contribute to the decision-making process surrounding the collection of data.

60. The Special Rapporteur believes that indicators should be relevant to the communities surveyed and that the active involvement of targeted groups would enable such relevance. Consulting all stakeholders in all stages of the exercise would help to build confidence between the authorities and the groups concerned and would also lead to better survey design, including the choice of relevant indicators. Moreover, involvement should also be understood as providing the right to members of vulnerable groups to be informed about the results of data collection and about the effectiveness of the anti-discrimination legislation, policies and programmes in place.

V. Implementing equality data collection and disaggregation

A. Institutional and policy framework

61. The Special Rapporteur would like to stress the importance of establishing adequate mechanisms and an institutional framework for the collection of personal data, in strict compliance with the necessary human rights safeguards. The different stakeholders, including national statistical agencies, relevant government agencies, national human rights institutions and civil society organizations, should come together in measuring discrimination and also in monitoring and assessing the impact of adjustment policies.

62. According to the *Principles and Recommendations for Population and Housing Censuses*, censuses are the principal means of collecting basic population statistics, as they provide a comprehensive source of statistical information for

economic and social development planning, as well as assessing conditions in human settlements. In order to have representative censuses, it is recommended that census authorities in a number of countries be alert to the possibility of stereotypes and biases affecting data on minority population groups. As representatives of those minority groups can often provide census planners with important information and insights relevant to both census content and operations, they should be consulted when planning a census. It is worth noting that in the context of a population census, in addition to identifying adequate indicators, census agents should be trained so as to avoid biases that may impact the proper collection of accurate data.

63. Socioeconomic indicators are often used as proxy variables for measuring equality and discrimination, to assess the extent to which the realization of various human rights is taking into consideration the cross-cutting norms of equality and non-discrimination. However, according to the OHCHR guide to the measurement of human rights indicators, classic quantitative measurements may not be enough to explain the difference in treatment or outcome between individuals belonging to different ethnic groups. It is suggested, therefore, that in addition to collecting quantitative data, qualitative analysis might be needed to arrive at a more definite assessment of discrimination. That is also necessary insofar as victims are sometimes unable to identify the discrimination to which they are subjected. Events-based information-gathering and direct surveys should therefore also be used in monitoring discrimination and assessing the prevalence of discriminatory practices. Some useful statistical tools set out in the OHCHR guide include socioeconomic statistics disaggregated by prohibited grounds of discrimination to capture disparities and differential outcomes that are often the result of multiple and accumulative discrimination; population surveys measuring experiences, perceptions and attitudes regarding discrimination; and discrimination or situation-testing surveys to measure directly discrimination in specific areas, such as access to work, housing, health care or other public services.

64. The Special Rapporteur would also like to emphasize the inherent conflict of interest that may arise between the data-gathering function, which is usually undertaken by service providers, and the analysis function, which should be undertaken by an independent entity in charge of analysing and interpreting the information collected from a human rights perspective. For example, in Europe that task could be entrusted to the equality bodies, which are independent organizations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality.

65. Data collection and analysis are complementary activities and should involve all stakeholders, including ministries and departments of public administration that produce administrative data; the national statistical agencies which undertake survey-based data; and national human rights institutions and civil society organizations for the collection of events-based data. While interpretation should be conducted by an impartial independent body, the Special Rapporteur encourages the relevant institutions to take full ownership of assessment outcomes, in order to implement the necessary corrective measures, including affirmative action plans.

66. Furthermore, due consideration should be given to principle 2 of the Fundamental Principles of Official Statistics, which states that to retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations including scientific principles and professional ethics,

on the methods and procedures for the collection, processing, storage and presentation of statistical data. Statistical agencies are also to facilitate a correct interpretation of the data and present information according to scientific standards on the sources, methods and procedures of the statistics (principle 3). Finally, in order to foster transparency, the laws, regulations and measures under which the statistical systems operate are to be made public (principle 7).

67. The Special Rapporteur is of the view that equality data can also be collected and analysed by independent research agencies, even in those contexts where there are legal prohibitions on the collection of such data. In his report on his visit to Spain, he emphasized that in the absence of official ethnic statistics at the time, the authorities had made extensive use of data and information gathered by NGOs and other relevant actors (see A/HRC/23/56/Add.2). The Special Rapporteur recommends that in such contexts, the State should provide resources to independent entities (such as universities) to allow them to collect the necessary data.

68. A report by the European Commission against Racism and Intolerance surveying the status of data collection among the 42 member States concluded that only half of them had collected data on ethnicity and/or religion.10 The research shows that practices regarding the collection of ethnic data have varied widely and such undertakings have most often been justified by reference to public interest, rather than on the basis of a legal obligation as part of anti-discrimination efforts.

69. The United Kingdom is an exception in the European context, as the Race Relations Act (1976) and the Data Protection Act (1998) specifically request the collection of ethnic data, which have been established as necessary for monitoring the existence or absence of equality of opportunity and treatment between individuals of different ethnic origin. The Race Relations Act clearly states that collecting statistical information is a legal obligation which applies to public authorities at the local and national levels and to firms with 150 employees or more. The Information Commissioner has large powers in authorizing the collection of "sensitive data". Since 1991, censuses in the country have included a question on ethnic groupings. The current categories are the result of extensive consultation between stakeholders and the census authorities.

70. In the context of its voluntary commitment to implementing a national system of human rights indicators, Brazil has established a Committee for Social Statistics, the lead coordinating body in charge of integrating a human rights perspective into social indicators. The committee is part of the Brazilian Institute of Geography and Statistics. As a result, the demographic census in 2010 included targeted questions to generate data disaggregated along criteria such as disability, indigenous language and race or colour. Brazil has sought international cooperation to develop the components of the national system of human rights indicators, in partnership with OHCHR and United Nations agencies (see A/HRC/WG.6/13/BRA/1). Human rights elements have been included in a database of indicators that contribute to policymaking, including Datasus, the computer systems department of the unified health system, which gathers information relative to the unified health system, the family grant registry and the school census.

71. The Special Rapporteur would like to voice his grave concern with regard to the absence of hate-crime statistics, which could be explained, inter alia, by insufficient awareness on the part of the authorities, who are failing to implement their duty to protect victims and provide them with effective remedies. The

underreporting of racially motivated crimes strengthens widespread impunity and deprives victims of access to effective remedies.

72. In its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee on the Elimination of Racial Discrimination recommended that States pay attention to indicators on discrimination, such as figures on racially motivated offences, especially those committed by police officers or other State agents. The absence, or low level, of complaints, prosecutions and convictions relating to acts of racial discrimination could be explained by the fact that victims might not be aware of their rights, might fear social censure or reprisals, might have limited trust in the police or judicial authorities or be deterred by the perceived or actual complexity and cost of the judicial process.

73. In order to assess discrimination by law enforcement agents, the Committee also recommended that attention be paid to whether there was a proportionately higher crime rate attributed to persons belonging to vulnerable groups, particularly as regards petty crimes and offences related to drugs and prostitution, as well as assessing harsh or inappropriate sentencing and the proportion of the prison population composed of persons from marginalized groups. The Special Rapporteur is of the view that the collection of such data would also allow for the detection of practices of racial profiling and increase transparency, as addressed in his report to the Human Rights Council in June 2015 (A/HRC/29/46).

74. In its general recommendation No. 31, the Committee also recommended that States collect on a regular basis, and in compliance with human rights safeguards, data from police, judicial and prison authorities and migration services on complaints, prosecutions and convictions relating to acts of racism and xenophobia and on the compensation awarded to the victims of such acts. Security and judicial institutions should therefore play an important role in collecting equality data, with a view to assessing whether the conduct of their respective mandates is free of discriminatory practices. Such data collection activities should be coordinated in cooperation with the specialized data collection institutions and strictly observe the legal framework regulating the gathering of personal data.

75. The United Kingdom has established good practice by systematically gathering data on law enforcement, disaggregated by ethnicity. The Equality Act of 2010 established a legal framework applicable to all public service entities, including the police, customs and excise officers, tax officers, trading standards and health and safety officers, licensing bodies, the immigration authorities and the prisons and probation administration. The act mandates the publication of equality objectives and information and the monitoring of progress towards meeting those objectives. Furthermore, the Police and Criminal Evidence Act (1984), which provides the police with the powers to stop and search individuals, also require that such stops and searches be recorded, inter alia, to enable the production of data through which supervisors, police authorities and local communities can identify any incorrect use of powers by police officers, including racial profiling.[16]

76. In Bulgaria, Hungary and Spain, a pilot project funded by the European Union called "Strategies for effective police stop and search", introduced stop forms to

[16] See Open Society Foundations, *Reducing Ethnic Profiling in the European Union: a Handbook of Good Practices* (New York, 2012).

record the nationality and/or ethnicity of the persons stopped. In the course of the project, evidence was found that the production of such data can reduce ethnic profiling and enhance efficiency at the same time.[16]

77. The Special Rapporteur would like to emphasize that in order to complement data generated by the use of stop forms, other data sources should be used, including information gathered by civil society actors through event-based surveys documenting occurrences of racial profiling and racially motivated crimes.

B. Data and the post-2015 development agenda

78. As the world is preparing to adopt a new development agenda, the question of how it has fared in implementing non-discrimination and equality measures through the Millennium Development Goals further draws attention to the need to develop adequate indicators to assess the realization of the objective of "leaving no one behind".

79. Development indicators, such as the human development index, have demonstrated that essentially focusing on national aggregates has not enabled inequalities to be captured and has further contributed to making the most disadvantaged components of society more invisible. A World Bank study shows that about half of the 155 developing countries surveyed lack adequate data to monitor poverty and, as a result, the poorest people in those countries have often remained undetected by the existing data.[17] The same can be said at the international level, as the performance indicators developed to assess the outcome of development policies have fallen short of properly assessing the human rights aspect of development. However, the Special Rapporteur would like to acknowledge the shift in 2006 to adopting a human rights-based approach to development in the programming of the United Nations Development Programme. That approach has sought to integrate the cross-cutting human rights norms, including non-discrimination and equality, in the monitoring and assessment of development policy outcomes and the implementation of development programmes.

80. The Millennium Development Goals Report 2015, while emphasizing that significant progress has been made in reducing extreme poverty by half, also stresses that this progress has been uneven. Millions of people are being left behind, especially the poorest and those disadvantaged because of their sex, age, disability, ethnicity or geographic location. The report identifies the lack of timely data and the unavailability of disaggregated data as a major challenge, which has often led to the implementation of inefficient decision-making and planning because they are based on outdated or inaccurate data.

81. Eradicating poverty and hunger remains at the core of the post-2015 development agenda and because access to basic services, such as education, health care or clean water, is frequently determined by socioeconomic status, gender, ethnicity or geography, there has been a strong call, including from civil society, for developing indicators that would enable the collection of more disaggregated statistics. They would capture the situation of the most vulnerable and marginalized

[17] See Umar Serajuddin and others, "Data deprivation: another deprivation to end", Policy Research Working Paper No. 7252 (Washington, D.C., World Bank, 2015).

populations and enhance measurement of discrimination and inequalities, both within and between countries.

82. The post-2015 development agenda emphasizes the need to commit further to combating discrimination and inequality. Target 10.3 of the proposed sustainable development goals calls for greater equality within and between countries through the elimination of discriminatory laws, policies and practices, while target 17.18 reflects the need to strengthen the means of implementation, including enhancing the collection of data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

83. The Special Rapporteur would like to emphasize that the collection of disaggregated data along the prohibited grounds of discrimination should be systematically conducted in all countries, while observing the necessary human rights safeguards. As highlighted throughout the present report, disaggregated data is essential for assessing levels of discrimination and inequality and to ensure that everyone is accounted for in any development progress.

VI. Conclusions and recommendations

84. **The Special Rapporteur welcomes the efforts made at the international, regional and national levels to develop normative frameworks for the collection and protection of personal data. He also takes note of the progress made in including questions on ethnicity in censuses across the world. However, the systematic collection of ethnically disaggregated data remains the exception rather than the norm and is often posited as a discretionary measure. The Special Rapporteur urges States to establish legal and institutional frameworks for the periodic collection of ethnically disaggregated data, with a view to highlighting the existence and extent of discrimination, in compliance with their international legal obligations. Ethnically disaggregated data is a necessary tool in gathering evidence of occurrences of racial discrimination; evaluating the situation of groups that are discriminated against; assessing the effectiveness of the measures taken; monitoring progress made; and deciding on special measures to correct the situation. Disaggregated data are essential to meaningful prevention and enforcement, and key to setting up evidence-based targets and designing appropriate and effective anti-discrimination legislation, policies and programmes.**

85. **While the Special Rapporteur strongly advocates for the establishment by States of a specific mandate for the collection of personal data, with a view to assessing levels of discrimination and implementing adequate policies, he also stresses the need for strong legal provisions on data protection and confidentiality, which are the necessary safeguards for observing the right to privacy and protecting individuals. Moreover, ethical safeguards, such as the Fundamental Principles of Official Statistics and the Declaration on Professional Ethics of the International Statistical Institute, should be adopted and enforced, with a view to creating national institutional frameworks that will prevent the misuse of data.**

86. **The Special Rapporteur recalls the importance of establishing participatory data-collection activities. National human rights institutions and**

civil society actors should be thoroughly consulted in designing and implementing data-collection activities, as this would foster more effective data-collection systems and generate more accurate information, while building trust among vulnerable communities. Similarly, States should ensure the independence of official statistics. Moreover, the interpretation and monitoring of the data collected should be entrusted to independent agencies, such as the equality bodies in Europe, in order to guarantee the accountability of public service providers. The results of data-collection exercises should be made public, in conformity with data safety and protection rules, in order to inform the population and especially the groups concerned, with a view to empowering them in seeking equal treatment.

87. The Special Rapporteur is aware of the challenges posed by the operationalization and financial implications of collecting data on a large scale and calls upon Member States to seek or provide appropriate technical and financial assistance at the regional and international levels. In that respect, the Special Rapporteur welcomes the commitment under target 17.18 of the proposed sustainable development goals to support statistical capacity-building in developing countries. The Special Rapporteur further encourages States to seek capacity-building assistance from OHCHR in integrating a human rights approach to collecting personal data and refers to the methodology developed in the OHCHR guide to measuring and implementing human rights indicators.

88. The Special Rapporteur remains gravely concerned at the low rates of recording racially motivated crimes and data on discrimination in the administration of justice. He urges States to make all necessary efforts to collect data that could help determine the occurrence of hate crimes, assess the access of victims to justice and detect discrimination in the administration of justice, including racial profiling, which he addressed in his most recent report to the Human Rights Council (A/HRC/29/46). In that regard, the Special Rapporteur encourages States to enforce the recommendations issued by the Committee on the Elimination of Racial Discrimination in its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

89. The Special Rapporteur echoes the recommendation stemming from the Millennium Development Goals Report 2015 that "only by counting the uncounted can we reach the unreached" and that high-quality data, disaggregated by the prohibited grounds of discrimination, including sex, indigenous status, ethnicity, disability and migrant status, among others, are key to making adequate decisions and monitoring progress towards achieving universal sustainable development.

90. The Special Rapporteur calls upon the Statistical Commission, which is the technical forum for the development and implementation of the indicators and monitoring framework and reporting mechanisms for the goals and targets of the post-2015 development agenda, to ensure that adequate indicators are developed to measure the human rights impact of the new development policies and establish specific measures to capture the cross-cutting human rights principle of non-discrimination and equality. He further suggests that civil society should be active players in determining adequate indicators for

monitoring whether development policies foster equal opportunities and seek to mitigate inequalities in outcome.

91. **The Special Rapporteur welcomes the target of increasing the collection of disaggregated data across the prohibited grounds of discrimination under target 17.18 of the proposed sustainable development goals. He would like to stress that data should be disaggregated on the basis of the agreed-upon prohibited grounds of discrimination, rather than discretionary context-relevant criteria. He invites States to inscribe the collection of ethnically disaggregated data within the framework of their obligation to fight discrimination.**

92. **Finally, the Special Rapporteur reminds States of the previous recommendations made by the mandate and other human rights mechanisms on the necessity of collecting disaggregated data with a view to upholding the cross-cutting human rights principle of non-discrimination.**